

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

JOHN M. PITMAN, III, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No.: 4:16-cv-00179
)	
XCENTRIC VENTURES, LLC, <i>et al.</i>,)	
)	
Defendants.)	
)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO QUASH

Plaintiffs, John M. Pitman ("Pitman") and Peninsula Plastic Surgery Center, LTD. ("PPS") (collectively the "Plaintiffs"), by counsel, submit the following Memorandum in Support of Plaintiffs' Motion to Quash. In support thereof, Plaintiffs state as follows:

FACTUAL BACKGROUND

On August 29, 2017, minutes after receiving the Court's Opinion and Order, counsel for Defendants Anna Richter, Tracey Richter and Bert Pitman (the "Richter Defendants") requested that the deposition of Pitman be scheduled. On September 5, 2017, the Richter Defendants unilaterally issued a Notice of Deposition requesting to take the deposition of Pitman on September 27, 2017. Plaintiffs' counsel is unable to attend the deposition as noticed and the September 27, 2017 date was not cleared with Plaintiff's counsel.

In addition to the above, a few key material facts are worth highlighting. First, the parties have not completed written discovery and there are several outstanding discovery disputes that must be resolved before the parties can genuinely participate in depositions. Second, the Plaintiffs have moved for a continuance and to extend various pretrial deadlines. Third, other Defendants have also moved to suspend the discovery process. Fourth, the parties just received

the benefit of the Court's opinion regarding the Defendants Motions to Dismiss which will guide this litigation. Finally, on September 12, 2017, the Richter Defendants each filed an Answer to the Plaintiffs' Amended Complaint which the Plaintiffs have not fully reviewed as of the filing of this Motion.

ARGUMENTS & AUTHORITIES

I. Applicable Rules

Under Federal Rule of Civil Procedure 30(b)(1), "[a] party who wants to depose a person by oral questions must give reasonable written notice to every other party." Local Civil Rule 30(H) states that "[a]s a general rule, eleven (11) days in advance of the contemplated taking of a deposition shall constitute reasonable notice of the taking of a deposition in the continental United States." However, the Rule provides that "this will vary according to the complexity of the contemplated testimony and the urgency of taking the deposition of a party or witness at a particular time and place." E.D. Va. Local Rule 30(H).

II. The Richter Defendant's Notice of Deposition Should be Quashed

As discussed more fully above, the Richter Defendants waited less than one week after requesting dates from Plaintiffs' counsel before unilaterally noticing Pitman's deposition. Plaintiffs' counsel is not available on the date noticed by the Richter Defendants. There exist no urgency which mandates the immediate deposition of Pitman and he can be made available at the appropriate time and place.

Further, the factual issues in this case are just now coming to light as each of the Richter Defendants filed their Answer to the Plaintiffs' Amended Complaint on September 12, 2017, a week after they filed their Notice to take Pitman's deposition. This is an extremely complex case with various defendants and multifaceted legal issues. Given the complexity of the case, it will

be impossible for the Plaintiffs to prepare for a deposition on short notice. Moreover, since written discovery is incomplete Plaintiffs' counsel is unable to adequately prepare to defend a deposition of Pitman. There also exist numerous procedural motions which require attention before the Plaintiffs can be prepared for any deposition- including the Plaintiffs request for a continuance. Given the above, the Notice of Deposition should be quashed.

WHEREFORE, the Plaintiffs respectfully request that this Court quash the Notice of Deposition filed by Defendants Anna Richter, Tracey Richter and Bert Pitman; that this Court permit the parties to schedule a deposition on a date available on the Plaintiffs' schedule; and for such other and further relief as the Court deems necessary and appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2017, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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